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United States Court of Appeals
Tenth Circuit

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Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

TIFFANY SIMPSON, personal representative of the estate of Logan Wayne Simpson,

Plaintiff - Appellee,

v.

JON LITTLE, in his individual capacity,

Defendant - Appellant,

and

IKE SHIRLEY; CITY OF BIXBY, OKLAHOMA,

Defendants.

No. 20-5109

Appeal from the United States District Court for the Northern District of Oklahoma (D.C. No. 4:18-CV-00491-GKF-CDL)

Submitted on the briefs:*

Scott B. Wood, Wood, Puhl & Wood, Tulsa, Oklahoma, for Defendant – Appellant.

Kevin D. Adams, Tulsa, Oklahoma, for Plaintiff – Appellee.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Before **MATHESON**, **PHILLIPS**, and **CARSON**, Circuit Judges.

MATHESON, Circuit Judge.

This case arises from the fatal shooting of Logan Wayne Simpson by Jon Little, a patrol officer for the City of Bixby, Oklahoma. Tiffany Simpson, Mr. Simpson's mother and personal representative of his estate, sued Officer Little in his individual capacity under 42 U.S.C. § 1983 for excessive force in violation of Mr. Simpson's Fourth and Fourteenth Amendment rights. Officer Little moved for summary judgment on qualified immunity grounds. The district court denied the motion. Officer Little appeals.

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm. First, we lack interlocutory appellate jurisdiction to review the district court's conclusion that a jury could find a constitutional violation because Officer Little challenges the factual basis for the court's determination. Second, we also lack jurisdiction to consider some of Officer Little's arguments regarding clearly established law, and we find his remaining arguments lack merit.

I. BACKGROUND

A. *Factual History*

"[W]hen reviewing the denial of a summary judgment motion asserting qualified immunity, we lack jurisdiction to review the district court's conclusions as to what facts the plaintiffs may be able to prove at trial." *Fancher v. Barrientos*, 723 F.3d 1191, 1194

(10th Cir. 2013). We therefore quote from the district court's opinion as to the facts relevant to this appeal. *See id.*

> At approximately 5:09 a.m. on July 22, 2018 the Bixby Police Department received a 9-1-1 call from Tiffany Simpson. Ms. Simpson asked the dispatcher to send an ambulance and the police to her mobile home located at 16409 South 84th East Avenue. When asked why, she stated someone had attacked her son with an "axe or something." Ms. Simpson also mistakenly reported to the dispatcher that "[s]omeone just stole my son's car. Like, I don't know who all is here and what's going on." Ms. Simpson stated "It's white. It's a Toyota something." She confirmed "It's an SUV." Actually, Ms. Simpson's sixteen-year-old son, Logan Simpson (Simpson), was driving the SUV.
>
> That morning, defendant Little was working in his capacity as a patrol officer for the City of Bixby. Little was several miles away when he started westbound toward the Simpsons' home. When Little was about a mile from the Simpson home, a white SUV passed Little driving eastbound. Little turned around and began following the SUV. Before Little could catch up, Simpson turned south onto South 92nd East Avenue. Little continued to follow Simpson, activating his overheard [sic] lights which activated his dash camera.
>
> Simpson continued south until he reached 176th Street where he had to turn right and head westbound. As Simpson made the turn, Little "bleeped" his siren. Little, still following Simpson, activated his siren and left it on. Little announced over the radio "Yeah, they are running." Simpson continued westbound until he reached the end of the street.
>
> The dash camera video shows Simpson's SUV reach the end of the street, drive in to the grass, execute a three-point turn, and proceed back down the street in the opposite direction. During that time, Little exits his patrol car, draws his gun from its holster, and begins giving loud verbal commands for Simpson to "get on the ground" and "show me your hands." Little again yells for Simpson to "Get out of the car and get on the ground!" Simpson does not comply and continues eastbound.

> Little then fired 10 rounds at Simpson over the course of about 2.5 seconds. Though the dash camera video does not show where Little was standing in relation to the SUV when the shots were fired, none of the bullets struck the front of the vehicle. Instead, the bullet defects begin near the middle of the driver's side window and continue along the side of the SUV, and two shots struck the rear of the vehicle. Little announced over the radio "210, shots fired, 210, shots fired." Little's radio call sign was "210."
>
> Other Bixby officers responded and located the SUV a couple of blocks away from where the shooting took place. Simpson had driven off the road, across a yard, and into a vacant field. Little and the other officers approached the SUV, removed Simpson, and began first aid.
>
> Simpson died later that day from two gunshot wounds. The bullets which struck Logan Simpson in his left hip came through the driver's door of the SUV and traveled "Left to right; Back to front; Downward."

App., Vol. III at 687-89 (citations and footnotes omitted).

B. ***Procedural History***

Ms. Simpson sued Officer Little in his individual capacity under 42 U.S.C. § 1983. She alleged he used excessive force against Mr. Simpson in violation of the Fourth and Fourteenth Amendments.

Officer Little moved for summary judgment. He argued he was entitled to qualified immunity because his use of deadly force was (1) reasonable and therefore constitutional and (2) did not violate clearly established law. The district court denied the motion.

First, relying on the factors articulated in *Graham v. Connor*, 490 U.S. 386 (1989) and *Estate of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255 (10th Cir. 2008), the court

held that because "a reasonable jury could conclude Simpson posed no immediate threat to Officer Little or others, the jury could also find that Officer Little's use of deadly force was objectively unreasonable and thereby violated Simpson's Fourth Amendment rights." App., Vol. III at 697-98.

Second, the court determined that Ms. Simpson "satisfied her burden of showing on summary judgment that Officer Little violated a clearly established constitutional right" because our decision in *Cordova v. Aragon*, 569 F.3d 1183 (10th Cir. 2009), "put officers on notice that using deadly force is unreasonable when a fleeing vehicle is not bearing down upon the officer and the only threat is one posed by reckless driving." App., Vol. III at 700-01.

II. **DISCUSSION**

On appeal, Officer Little contends the district court's inaccurate understanding of the evidence led to erroneous conclusions that Officer Little (1) infringed Mr. Simpson's constitutional rights and (2) violated clearly established law. He also argues that the district court committed legal errors on both elements of the qualified immunity analysis.

1. **Legal Background**

a. *Qualified immunity*

Under § 1983, a person acting under color of state law who "subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured." 42 U.S.C. § 1983. When a § 1983 defendant raises a qualified immunity defense, the plaintiff bears the burden of overcoming it. *Sawyers v. Norton*, 962 F.3d

1270, 1282 (10th Cir. 2020). At summary judgment, the plaintiff must (1) raise a genuine issue of material fact that the defendant violated a federal constitutional or statutory right, and (2) show the right was clearly established at the time of the defendant's violative conduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009); *Est. of Jensen ex rel. Jensen v. Clyde*, 989 F.3d 848, 854 (10th Cir. 2021).

b. *Interlocutory appellate jurisdiction*

We have appellate jurisdiction to review "all final decisions of the district courts of the United States." 28 U.S.C. § 1291. "Orders denying summary judgment are ordinarily not appealable final [decisions] for purposes of . . . § 1291." *Duda v. Elder*, 7 F.4th 899, 909 (10th Cir. 2021) (quotations omitted) (alteration in original). But under the collateral order doctrine, "final (and therefore appealable) decisions . . . include decisions that are conclusive on the question decided, resolve important questions separate from the merits, and are effectively unreviewable if not addressed through an interlocutory appeal." *Sawyers*, 962 F.3d at 1281 n.9 (quotations omitted).

The denial of qualified immunity to a public official is therefore "immediately appealable under the collateral order doctrine to the extent it involves abstract issues of law." *Fancher*, 723 F.3d at 1198; *see Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985); *Duda*, 7 F.4th at 909. Abstract issues of law include whether the law was clearly established at the time of the alleged violation. *Lewis v. Tripp*, 604 F.3d 1221, 1225 (10th Cir. 2010).

But we "lack[] jurisdiction at this stage to review a district court's factual conclusions, such as the existence of a genuine issue of material fact for a jury to decide,

or that a plaintiff's evidence is sufficient to support a particular factual inference." *Fancher*, 723 F.3d at 1199 (quotations omitted); *see Johnson v. Jones*, 515 U.S. 304, 307, 313 (1995). "[I]f a district court concludes that a reasonable jury could find certain specified facts in favor of the plaintiff, the Supreme Court has indicated we usually must take them as true—and do so even if our own *de novo* review of the record might suggest otherwise as a matter of law." *Est. of Booker v. Gomez*, 745 F.3d 405, 409-10 (10th Cir. 2014) (quotations omitted).

In other words, "we must scrupulously avoid second-guessing the district court's determinations regarding whether [the appellee] has presented *evidence* sufficient to survive summary judgment." *Fancher*, 723 F.3d at 1199 (quotations omitted). "The district court's factual findings and reasonable assumptions comprise the universe of facts upon which we base our legal review of whether defendants are entitled to qualified immunity." *Cox v. Glanz*, 800 F.3d 1231, 1242 (10th Cir. 2015) (quotations omitted).

We may, however, review the factual record de novo when (1) "the district court at summary judgment fails to identify the particular charged conduct that it deemed adequately supported by the record," *Lewis*, 604 F.3d at 1225; (2) "the version of events the district court holds a reasonable jury could credit is blatantly contradicted by the record," *id.* at 1225-26 (quotations omitted); *see Scott v. Harris*, 550 U.S. 372, 380-81 (2007); or (3) "the district court commits *legal* error en route to a *factual* determination," *Pahls v. Thomas*, 718 F.3d 1210, 1232 (10th Cir. 2013).

c. *Summary judgment and standard of review*

"Within this court's limited jurisdiction, we review the district court's denial of a summary judgment motion asserting qualified immunity de novo." *Fancher*, 723 F.3d at 1199. We apply "the same legal standard as the district court, . . . view[ing] the evidence and the reasonable inferences to be drawn from the evidence in the light most favorable to the nonmoving party." *Schaffer v. Salt Lake City Corp.*, 814 F.3d 1151, 1155 (10th Cir. 2016) (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

d. *Fourth Amendment excessive force*

To determine whether an officer used reasonable force under the Fourth Amendment,[1] we apply the three-part test from *Graham v. Connor*, 490 U.S. at 396. *See Huff v. Reeves*, 996 F.3d 1082, 1089 (10th Cir. 2021). Whether force was reasonable turns on (1) "the severity of the crime at issue," (2) "whether the suspect poses an immediate threat to the safety of the officers or others," and (3) "whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396.

"The second *Graham* factor . . . is undoubtedly the most important and fact intensive factor in determining the objective reasonableness of an officer's use of force."

[1] The Fourteenth Amendment incorporates the Fourth Amendment right to be free from unreasonable searches and seizures against the states. *Mapp v. Ohio*, 367 U.S. 643, 655-56 (1961).

Pauly v. White, 874 F.3d 1197, 1216-17 (10th Cir. 2017) (citation and quotations omitted). We rely on the four *Estate of Larsen* factors to assess the threat posed by the suspect (the second *Graham* factor). *Est. of Larsen*, 511 F.3d at 1260. These factors are "(1) whether the officers ordered the suspect to drop his weapon, and the suspect's compliance with police commands; (2) whether any hostile motions were made with the weapon towards the officers; (3) the distance separating the officers and the suspect; and (4) the manifest intentions of the suspect." *Id.*

We apply the *Graham* factors "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight," recognizing that "officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S at 396-97; *see Vette v. K-9 Unit Deputy Sanders*, 989 F.3d 1154, 1169 (10th Cir. 2021).

2. **Analysis**

The district court denied Officer Little's motion for summary judgment because (1) issues of fact precluded finding that he did not violate Mr. Simpson's constitutional rights, and (2) *Cordova v. Aragon*, 569 F.3d 1183, clearly established the applicable law. Mr. Simpson now asks us to revisit the district court's factual determinations undergirding both prongs of its qualified immunity analysis. On interlocutory review, we lack jurisdiction to do so. *See Fancher*, 723 F.3d at 1199-1200. Exceptions that might allow us to review the district court's factual determinations do not apply because (1) Officer Little has not shown that the record blatantly contradicts the district court's

factual analysis, and (2) the district did not commit legal error en route to making factual determinations.[2] Officer Little's legal arguments implicitly invoking these exceptions are unavailing. His jurisdictionally appropriate challenges to the district court's analysis of the second prong of qualified immunity also lack merit.

a. *Constitutional violation*

i. Officer Little's factual challenges

Officer Little contends that his use of force did not violate Mr. Simpson's constitutional rights because a reasonable officer on the scene would have believed that Mr. Simpson "posed a threat of harm to Defendant Little." Aplt. Br. at 28. According to Officer Little, the district court failed to recognize undisputed facts establishing the reasonableness of his actions and improperly applied the *Graham* and *Estate of Larsen* factors when analyzing the immediacy of the harm he faced.[3] His arguments "depend[] upon a challenge to the facts the district court concluded a reasonable jury could infer based upon the evidence in the summary judgment record." *Fancher*, 723 F.3d at 1199.

Officer Little asks us to disregard the district court's factual determinations regarding the second *Graham* factor—immediacy of the threat to the officer or others—

[2] Officer Little makes no arguments touching on the third exception—that "the district court at summary judgment fail[ed] to identify the particular charged conduct that it deemed adequately supported by the record." *Lewis*, 604 F.3d at 1225.

[3] According to Officer Little, the district court "did not give any consideration to the factors found in *Larsen* with regard to Defendant Little's use of deadly force, instead focusing its analysis entirely on the three non-exhaustive *Graham* factors." Aplt. Br. at 28. This is wrong. The district court explicitly addressed each of the four *Estate of Larsen* factors. *See* App., Vol III at 693-97.

and adopt his version of events. He contends that Mr. Simpson "had tried to run over him," and that Mr. Simpson "had several other paths of escape away from Defendant Little, but . . . headed towards Defendant Little's position in the street." Aplt. Br. at 5. Officer Little also asserts that when he began shooting, the "SUV [was] coming towards him" and "the vehicle [was] well in front of [him] when he decided to fire, engaged his trigger and began pulling his trigger." *Id.* at 5, 20. As to each of these factual contentions, the district court found a reasonable jury could infer facts to conclude otherwise.

The district court determined that a reasonable jury could determine that "Simpson posed no immediate threat to Officer Little or others." App., Vol III at 698. It noted that "the dash camera video does not show Officer Little in the path of the SUV at any point," and a photo of the scene "show[s] tire marks and path [of Mr. Simpson's vehicle] in the grass." *Id.* at 694. From this evidence, the court said a reasonable jury could find that Mr. Simpson "attempted to avoid hitting Little by veering off the right side of the road." *Id.* When discussing Officer Little's location when he fired his weapon, the court pointed to evidence regarding where and at what angle the bullets struck the vehicle, indicating Officer Little was not directly in the SUV's path but "was standing to the side and to the rear of the SUV when he fired." *Id.* at 695. It concluded a reasonable jury could find Mr. Simpson "posed no immediate danger to Officer Little or others when Little fired the fatal shots." *Id.* at 697.

The district court further said a reasonable jury could find that because "Simpson posed no immediate threat to Officer Little or others, the jury could also find that Officer

Little's use of deadly force was objectively unreasonable and thereby violated Simpson's Fourth Amendment rights." *Id.* at 698. Officer Little seeks to relitigate the factual inferences the court made en route to that conclusion. But on interlocutory appeal we cannot "second-guess[] the district court's determinations regarding whether [Ms. Simpson] has presented *evidence* sufficient to survive summary judgment." *Fancher*, 723 F.3d at 1199 (quotations omitted).

ii. Exceptions to prohibition on interlocutory factual review

The exceptions that might permit us to reassess a district court's factual determinations on interlocutory review do not apply. We may review the district court's factual determinations de novo (1) if the record blatantly contradicts them, *Lewis*, 604 F.3d at 1225-26; or (2) if "the district court commit[ted] *legal* error en route to a *factual* determination," *Pahls*, 718 F.3d at 1232. Under a liberal reading of Officer Little's briefing, he argues that these exceptions apply. We disagree.

1) Blatant contradiction

Rather than argue that the record blatantly contradicts the district court's factual determinations, Officer Little contends the district court erred by not recognizing undisputed facts supporting the reasonableness of his conduct. But Officer Little does not identify any such facts. Thus, even assuming he were attempting to invoke the first exception, it clearly does not apply.

2) Legal error to determine a fact

Officer Little also makes two arguments that could be read as suggesting that the district court committed legal error en route to factual determinations. Both are unavailing.

First, he asserts that the district court's factfinding violated *Graham*'s objectivity requirement by adopting Ms. Simpson's version of the events. He claims the court "adopted Plaintiff's version of facts that Simpson was 'attempting to drive around (not into Little),'" Aplt. Br. at 18 (quoting App., Vol. III at 694), and that "Little was not in the direct path of the SUV based on Plaintiff's perception of the events," *id*. at 19.[4]

Officer Little misconstrues the district court's order. The court quoted language from Ms. Simpson's brief that Mr. Simpson was "attempting to drive around (not into Little)" to summarize her argument, not to adopt it. *See* App., Vol. III at 694. But when it came to evaluating (1) whether Mr. Simpson made any hostile motions and (2) Mr. Simpson's manifest intentions—the second and fourth *Estate of Larson* factors—the court relied on video and photographic evidence in the record. *Id.*

As for Officer Little's location relative to Mr. Simpson at the time of the shooting, the court did not rely on Ms. Simpson's version of events, as Officer Little contends. Instead, the court gave a detailed account of the evidence regarding the location and angle of bullet holes in the SUV and the trajectory of the bullets that struck Mr.

[4] Ms. Simpson, the plaintiff, was not present during the incident, so there is no evidence regarding her perception of the events.

Simpson.[5] It concluded that the evidence supported Ms. Simpson's view that Officer Little "was standing to the side and to the rear of the SUV when he fired." *Id.* Although Officer Little contends that "the evidence disprove[s] this theory . . . ," Aplt. Br. at 19, he does not explain why this is so. He has provided no reason to conclude that the district court committed a legal error in analyzing the *Graham* factors.

Second, Officer Little contends the district court erred by relying on decisions published after the incident. We disagree. He cites *Plumhoff v. Rickard*, 572 U.S. 765 (2014), which states, "[a]n official sued under § 1983 is entitled to qualified immunity unless it is shown that the official violated a statutory or constitutional right that was 'clearly established' at the time of the challenged conduct." *Id.* at 778. *Plumhoff* could plausibly be read as requiring that courts must consider only the law in existence at the time of the defendant's conduct when assessing the first prong of qualified immunity. But this court has never adopted such a reading and has instead relied on "new" law when assessing whether a defendant's actions amounted to a constitutional violation. *See, e.g.*, *A.M. v. Holmes*, 830 F.3d 1123, 1159 (10th Cir. 2016). The district court therefore did not err in relying on *Estate of Smart by Smart v. City of Wichita*, 951 F.3d 1161 (10th Cir. 2020), and *Reavis Estate of Coale v. Frost*, 967 F.3d 978 (10th Cir. 2020) on the first prong of qualified immunity.

[5] For instance, the court noted that "all the bullets struck the side and rear of the vehicle" and that the fatal shots struck Mr. Simpson "with a trajectory of back to front." App., Vol. III at 695.

* * * *

On the issue of whether there was a constitutional violation, we lack jurisdiction to review Officer Little's challenges to the district court's factual determinations regarding the immediacy of the threat posed by Mr. Simpson.

b. *Clearly established law*

As to the clearly established law prong of qualified immunity, Officer Little again challenges the factual findings of the district court, arguing that "[a]s a consequence of the [c]ourt's improper analysis of this case as to the reasonableness of Defendant Little's conduct based in light of the facts and circumstances confronting him, the [c]ourt's qualified immunity analysis under the second prong is erroneous as well." Aplt. Br. at 32. On interlocutory review, we may consider only the abstract legal issue of whether the law was clearly established. *See Est. of Valverde ex rel. Padilla v. Dodge*, 967 F.3d 1049, 1058 (10th Cir. 2020). We therefore lack jurisdiction to review some of Officer Little's arguments because he disputes the district court's factual determinations "rather than raising a legal challenge[] to the denial of qualified immunity based on those facts." *Duda*, 7 F.4th at 916 (quotations omitted) (alterations in original). His other arguments, which raise legal issues we can consider, lack merit.

i. *Cordova v. Aragon*

The district court determined that *Cordova v. Aragon*, 569 F.3d 1183, provided clearly established law. *Cordova* involved a car chase during which a truck driver ran red lights, drove straight at police, attempted to ram the defendant police officer's car, and drove the wrong way down the highway. 569 F.3d at 1186. Eventually, the defendant

officer exited his vehicle and attempted to halt the truck using "stop sticks." *Id.* at 1187. The truck drew close, heading in the officer's direction. *Id.* The officer, fearing he was about to be run over, fired at the truck while trying to move out of the way. *Id.* Some shots hit the side of the truck. One struck the driver in the back of the head, killing him. *Id.*

In *Cordova*, we accepted the district court's finding that the officer "was not in immediate danger" at the time of the shooting. *Id*. Because the threat to the officer was not "actual and imminent" when he pulled the trigger, we could not say that the defendant's use of force was reasonable. *Id.* at 1190. Instead, we held that a "substantial but not imminent risk imposed on innocent bystanders and police by a motorist's reckless driving" did not justify a use of force "that is nearly certain to cause the motorist's death." *Id.* at 1189.

ii. Officer Little's factual challenges

We have jurisdiction to consider "whether the facts that the district court ruled a reasonable jury could find, taken in the light most favorable to the plaintiff, show a violation of clearly established law under [*Cordova*]." *Duda*, 7 F.4th at 916 (quotations omitted). But some of Officer Little's arguments dispute those facts. Because our interlocutory jurisdiction "is premised on our accepting the facts we must assume to be true at this stage of the proceedings," *id.* (quotations omitted), we lack jurisdiction to review several of Officer Little's clearly-established-law arguments.

According to Officer Little, the facts in *Cordova* are distinguishable from those in this case. He argues that in *Cordova* "it was undisputed there was no imminent threat of

danger to the officers," Aplt. Br. at 35, whereas here he "is challenging the [district court's] finding that Defendant Little was not in imminent danger," *id.* at 36. As discussed above, however, the district court determined that a reasonable jury could find "that Little was not in immediate danger when he fired the two fatal shots as Simpson passed by and drove away." App., Vol. III at 695.

After trying to distinguish *Cordova*, Officer Little analogizes to several cases including *Carabajal v. City of Cheyenne*, 847 F.3d 1203 (10th Cir. 2017), and *Clark v. Bowcutt*, 675 F. App'x 799 (10th Cir. 2017) (unpublished), which, he contends, establish that his conduct was reasonable. In both *Carabajal* and *Clark*, we determined that the defendant officers' use of force was reasonable because the officers were directly in front of an approaching vehicle when they fired on the drivers. *See Carabajal*, 847 F.3d at 1206, 1209-10; *Clark*, 675 F. App'x at 800-01, 804. The facts in *Carabajal* and *Clark* resemble Officer Little's proffered version of the events here. But analogizing to these cases, Officer Little implicitly disputes the district court's factual conclusion that a reasonable jury could find "Little was not in the direct path of the SUV." App., Vol. III at 694. "Rather than accept these facts," Officer Little's "clearly-established-law argument implicitly disputes them." *Duda*, 7 F.4th at 916.

Officer Little's attempts to distinguish *Cordova* dispute "facts we must assume to be true at this stage of the proceedings." *Fancher*, 723 F.3d at 1200. We lack jurisdiction to consider Officer Little's clearly-established-law arguments that are "an intertwining of disputed issues of fact and cherry-picked inferences, on the one hand, with principles of law, on the other hand." *Duda*, 7 F.4th at 916 (quotations omitted).

iii. Officer Little's jurisdictionally appropriate challenges

Officer Little makes three jurisdictionally appropriate challenges to the district court's analysis of the clearly-established-law prong of qualified immunity. All are unavailing.

First, Officer Little contends the district court should have granted summary judgment in his favor because Ms. Simpson did not sufficiently brief the second qualified immunity prong before the district court. In making this argument, Officer Little mischaracterizes the record, stating that "[t]he only citation [in Ms. Simpson's summary judgment brief] with regard to established law is a discussion of *Tennessee v. Garner* and a single sentence from *Reavis*." Aplt. Br. at 34-35. In fact, Ms. Simpson's summary judgment brief explicitly noted that *Reavis* relied on *Cordova* and quoted relevant language from *Reavis* in several instances. *See* App., Vol. I. at 163.

In opposition to summary judgment, Ms. Simpson presented a satisfactory argument as to why *Garner* and *Cordova* clearly established that Officer Little's use of force was unreasonable. Although *Reavis* came after the shooting here, it recognized the law was clearly established before the shooting. *Reavis*, 967 F.3d at 995; *see also Soza v. Demsich*, --- F.4th ---- (10th Cir. 2021), 2021 WL 4203054, at *3 n.3 ("This court has recognized that a case decided after the incident underlying a § 1983 action can state clearly established law when that case ruled that the relevant law was clearly established as of an earlier date preceding the events in the later § 1983 action." (citing *McCowan v. Morales*, 945 F.3d 1276, 1287, 1289 (10th Cir. 2019)). We therefore reject Officer Little's argument.

Second, Officer Little contends the district court "erred by relying on the generalized holding in *Tennessee v. Garner*, as clearly established law in denying Defendant Little qualified immunity." Aplt. Br. at 34. This argument misunderstands the district court's opinion. The court summarized *Garner*'s holding that "where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so." App., Vol. III at 698 (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)). But it then relied on *Cordova*, a factually analogous case applying *Garner*, to rule that the law was clearly established. *See id.* at 699-700.

Third, to the extent Officer Little makes a jurisdictionally appropriate argument in attempting to distinguish *Cordova* without challenging the district court's factual determinations, he does so in a single, conclusory sentence. He asserts that *Cordova* is distinguishable because it "involved a high speed chase that lasted sixteen minutes and covered about eight miles of highways, which the suspect was traveling at approximately 40 miles an hour, and the chase had never concluded when officers shot the individual." Aplt. Br. at 36.

Despite these minor factual differences, *Cordova* clearly established the law here. "A clearly established right is one that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam) (quotations omitted). "A Supreme Court or Tenth Circuit decision on point or the weight of authority from other courts can clearly establish a right," *Halley v. Huckaby*, 902 F.3d 1136, 1144 (10th Cir. 2018), but a case directly on

point is not required so long as "existing precedent [has] placed the statutory or constitutional question beyond debate," *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (per curiam) (quotations omitted); *see York v. City of Las Cruces*, 523 F.3d 1205, 1212 (10th Cir. 2008) (explaining that clearly established law "does not mean that there must be a published case involving identical facts; otherwise we would be required to find qualified immunity wherever we have a new fact pattern" (quotations omitted)); *Weigel v. Broad*, 544 F.3d 1143, 1154 (10th Cir. 2008) ("We do not think it requires a court decision with identical facts to establish clearly that it is unreasonable to use deadly force when the force is totally unnecessary to restrain a suspect or to protect officers, the public, or the suspect himself.").

Though the facts in *Cordova* and this case are not identical, the relevant question is whether *Cordova* provided "fair warning" to a reasonable officer in Officer Little's position that his actions violated the Fourth Amendment. *See Janny v. Gamez*, 8 F.4th 883, 913 (10th Cir. 2021). It did. *Cordova* clearly established that officers may not use lethal force against a driver who does not pose an immediate threat to officers or third parties. *See Cordova*, 569 F.3d at 1190. And as the district court determined, a reasonable jury could find that Mr. Simpson "posed no immediate threat to Officer Little or others." App., Vol. III at 698. In the wake of *Cordova*, Officer Little was therefore on notice that such conduct violated the Fourth Amendment. Differences in the speeds at which the driver in *Cordova* and Mr. Simpson were traveling or the durations of the car chases do not alter this conclusion—"a prior case need not be exactly parallel to the conduct here for the officials to have been on notice of clearly established law."

Est. of Smart, 951 F.3d at 1168 (quotations omitted); *see Hope v. Pelzer*, 536 U.S. 730, 739 (2002).

* * * *

We lack jurisdiction to consider some of Officer Little's arguments regarding clearly established law. We reject the others. We therefore affirm the district court's ruling on the second prong of qualified immunity.

III. **CONCLUSION**

We lack jurisdiction to consider (1) Officer Little's arguments as to whether he committed a constitutional violation and (2) some of his arguments as to whether he violated clearly established law. To the extent he has presented proper arguments on clearly established law, we reject them and affirm the district court's judgment.